

State of Hawai'i  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Division of Aquatic Resources  
Honolulu, Hawai'i 96813

May 25, 2007

Board of Land  
and Natural Resources  
Honolulu, Hawai'i

REQUEST APPROVAL ON REVISIONS TO THE JOINT PERMIT FORM, AND  
APPROVAL OF SPECIAL TERMS AND CONDITIONS, FOR PERMITTED ACTIVITIES  
WITHIN THE NORTHWESTERN HAWAIIAN ISLANDS - PAPAĀNAUMOKUĀKEA  
MARINE NATIONAL MONUMENT

SYNOPSIS:

The Division of Aquatic Resources (DAR) working in coordination with the legal advisors to the Papahānaumokuākea Marine National Monument recommends the adoption of the revised general and special terms and conditions contained in the joint permit form template. At the April 27, 2007 meeting of the Board of Land and Natural Resources (Board), the Board approved and adopted a joint permit form for permitted activities within the Northwestern Hawaiian Islands developed collaboratively by the Division of Aquatic Resources (DAR), working in concert with the State of Hawai'i's Co-Trustees to the Papahānaumokuākea Marine National Monument. The joint permit form template replaces the previous State permit form template issued for permitted activities within the Northwestern Hawaiian Islands State Marine Refuge pursuant to Chapter 13-60.5, HAR. While the Board approved the new joint permit form, it directed DAR to review all permit conditions that had been applied to the NOAA application for a permit approved at the January 26, 2007 Land Board meeting. The Board requested that DAR ensure that all these permit conditions were consistent with the joint permit form general and special conditions.

LEGAL REFERENCES:

Hawai'i Revised Statutes (HRS) §§ 171-6(3) and (8), as amended;

Hawai'i Administrative Rules (HAR) ch. 13-60.5;

Presidential Proclamation 8031: MOA among the State of Hawai'i DLNR, and the U.S. Dept. of the Interior USFWS, and the U.S. Department of Commerce, NOAA for Promoting Coordinated Management of the Northwestern Hawaiian Islands Marine National Monument;

50 CFR Part 404

LOCATION:

The Papahānaumokuākea Marine National Monument (Monument) consists of all land and interest in lands owned or controlled by the Government of the United States within the Monument, including emergent and submerged land and waters of the Northwestern Hawaiian Islands (NWHI).

DISCUSSION:


The joint permit form terms and conditions have undergone intense scrutiny and an extensive process of review over the past five months, in consultation and conjunction with staff and counsel from the White House Council on Environmental Quality, U.S. Departments of Commerce, Interior, and Justice; the Office of Hawaiian Affairs, the Department of the Attorney General, and representatives from the Co-Trustee agencies. A comparison of specific terms and conditions contained in prior State NWHI permits was also undertaken to ensure that all these terms and conditions were either incorporated into the general conditions contained in the joint permit form, or were revised as special conditions. A comparison matrix of the former State conditions and the joint permit conditions was provided to the Board at the April 27, 2007 Board meeting. Many similar concerns addressed in prior State permit conditions, such as documenting activities while in the Monument, curtailing of commercial exploitation of resources and the like were revised and incorporated into the joint permit conditions. Upon further review of these former State conditions, minor changes were made to the previously approved joint permit form (Attachment 1). In addition, a revised set of special conditions, which were based on the former State permit conditions, has been further vetted and reviewed and are contained therein as Attachment 2. These special terms and conditions are consistent with former conditions applied to previous State permits. As is summarized in Attachment 3, these special terms and conditions are to be applied based on the type of activity proposed in the permit application for a specific class of permits.

RECOMMENDATIONS:

1. That the Board approve the revised Papahānaumokuākea Marine National Monument Joint Permit Form.
2. That the Board approve the Legally Vetted Special Terms and Conditions that will be used in concert with the general conditions now contained in the Joint Permit Form as applicable and based on the proposed activities in the permit application.
3. That the Board recognize that the Joint Permit General Conditions together with the revised Special Conditions are consistent with the former conditions on the State NWHI Refuge Permit.

May 25, 2007

Respectfully submitted,



DAN POLHEMUS  
Administrator

APPROVED FOR SUBMITTAL



ALLAN A. SMITH  
Interim Chairperson

Request Approval on Revisions to the Joint Permit Form, and Approval of Special Terms and Conditions, for Permitted Activities within the Northwestern Hawaiian Islands - Papahānaumokuākea Marine National Monument

**PAPAHĀNAUMOKUĀKEA  
MARINE NATIONAL MONUMENT  
PERMIT**



<b>Permittee:</b>	<b>Permit Number:</b>	PMNM-200x-xxx
	<b>Effective Date:</b>	
	<b>Expiration Date:</b>	



**Project Title:** \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_



This permit is issued for activities in accordance with Proclamation 8031 ("Proclamation") establishing the Papahānaumokuākea Marine National Monument ("Monument") under the Antiquities Act of 1906, 16 USC §§ 431-433 ("Antiquities Act") and implementing regulations (50 CFR Part 404). All activities must be conducted in accordance with the Proclamation and the regulations (attached). No activity prohibited by the Proclamation or 50 CFR Part 404 is allowed except as specified below. Chapter 13-60.5, Hawaii Administrative Rules remains in effect for proposed activities in State waters.

Subject to the terms and conditions of this permit, the National Oceanic and Atmospheric Administration (NOAA), the State of Hawai'i, and the U.S. Fish and Wildlife Service (collectively, the Co-Trustees) hereby authorize the permittee listed above to conduct \_\_\_\_\_ activities within the Monument. All activities are to be conducted in accordance with this permit. The permit application is incorporated into this permit and made a part hereof; provided, however, that if there are any conflicts between the permit application and the terms and conditions of this permit, the terms and conditions of this permit shall be controlling.

**PERMITTED ACTIVITY DESCRIPTION:**

The following activities are authorized by this permit:

1.

No further disturbance of the cultural or natural resources of the Monument is allowed.

**Papahānaumokuākea Marine  
National Monument**  
 6600 Kalaniana'ole Hwy  
 Suite 300  
 Honolulu, HI 96825

**PERMITTED ACTIVITY LOCATION:**

Other than entrance into the Monument, the permitted activities listed above are allowed at the following locations:

1.

**GENERAL TERMS AND CONDITIONS:**

In accordance with the Proclamation and applicable regulations, the permitted activities listed above are subject to the following general terms and conditions:

1. The permittee must sign and date this permit on the appropriate line below. Once signed and dated, the permittee must provide a signed original copy to the Monument official identified below. The permit becomes valid on the date the last Monument official signs the permit and shall remain valid for not more than one (1) year from that date.

Permit Coordinator  
Papahānaumokuākea  
Marine National Monument  
6600 Kalaniana'ole Hwy. Suite 300  
Honolulu, HI 96825

2. This permit is neither transferable nor assignable and must be carried by the permittee while engaging in any activity authorized by this permit. All other persons entering the Monument under the authority of this permit must provide the name of the permittee or the permit number to any authorized enforcement or management personnel upon request.
3. This permit may only be modified by written amendment approved by the Co-Trustees. Modifications to this permit must be requested in the same manner as the original request was made. Any modifications requested by the permittee, such as adding or changing personnel to be covered by the permit or to change the activities that are allowed, must be made in writing.
4. This permit is subject to suspension, modification, non-renewal, or revocation for violation of the Proclamation, implementing regulations, or any term or condition of the permit. Any verbal notification of a violation from an authorized Monument representative may require immediate cessation of activities within the Monument. The issuance of a permit shall not constitute a vested or property right to receive additional or future permits. This permit may, in the sole discretion of the Co-Trustees, be renewed or reissued. However, there is no right

to a renewal or re-issuance. Failure to fulfill permit requirements may affect consideration of future permit applications.

5. Permit terms and conditions shall be treated as severable from all other terms and conditions contained in this or any other ancillary permit. In the event that any provision of this permit is found or declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms or conditions of this permit.
6. This permit does not relieve the permittee of responsibility to comply with all federal, state and local laws and regulations. Activities under this permit may be conducted only after any other permits or authorizations necessary to conduct the activities have been obtained.
7. The permittee may be held liable for the actions of all persons entering the Monument under the authority of this permit.
8. All persons entering the Monument under the authority of this permit are considered under the supervision of the permittee and may be liable in addition to the permittee for any violation of this permit, the Proclamation and implementing regulations in conjunction with this permit. The permittee must ensure that all such persons have been fully informed of the permit terms and conditions prior to entry into the Monument. Each such person must provide written acknowledgment to the permittee, prior to entry into the Monument, that he/she has received a copy of the permit, agrees to abide by all applicable terms and conditions, and may be liable for violations of the permit. The permittee shall maintain all signed acknowledgments and submit them with the summary report described in General Condition #22.b.
9. Notification of entry into the Monument must be provided at least 72 hours, but no longer than one month, prior to the entry date. Any updates to the list of personnel must also be provided at least 72 hours before entering the Monument. Notification of departure from the Monument must be provided within 12 hours of leaving the Monument. Notification may be made via e-mail, or telephone by contacting: E-mail: [nwhi.notifications@noaa.gov](mailto:nwhi.notifications@noaa.gov); Telephone: 1-866-478-6944; or 1-808-395-6944. No other methods of notification will be considered valid.
10. The permittee and any person entering the Monument under the authority of this permit shall, before entering the Monument, attend a cultural briefing or view designated cultural informational materials on Papahānaumokuākea regarding the region's cultural significance and Native Hawaiians' spiritual and genealogical connection to the natural and cultural resources. Persons entering the Monument at Midway Atoll may satisfy this requirement upon arrival.
11. All vessels (including tenders and dive boats), engines and anchor lines shall be free of introduced species prior to entry into the Monument. To ensure this, all

vessels, engines and anchor lines shall be inspected for potential introduced species prior to departing the last port before entering the Monument. No later than 24 hours prior to entry, the permittee shall provide the Monument Permit Coordinator with a report prepared by the individual conducting the inspection that: a) sets forth when and where the inspection occurred; b) identifies any introduced species observed, including where found; c) summarizes efforts to remove any species observed; and d) certifies the vessel as free of all introduced species. The Monument Permit Coordinator shall review the report and, based on the review, may delay the entry into the Monument until all concerns identified by the Monument Permit Coordinator have been addressed.

12. All hazardous materials, biohazards and sharps, must be pre-approved by the Co-Trustees. For purposes of this permit, "hazardous material" has the same meaning as the definition found at 49 CFR §105.5 (U.S. Department of Transportation). All hazardous materials, biohazards and sharps must be stored, used, and disposed of according to applicable laws and Monument-approved protocols. The permittee, or a designated individual entering the Monument under the authority of this permit must be properly trained in the use and disposal of all such materials proposed. Proof of appropriate training may be required by the Co-Trustees. No such material may be left in the Monument after the departure of the permittee unless it has been previously approved by Monument staff. Immediately after the project is complete the permittee must remove all such materials from the Monument. The permittee will be responsible for all costs associated with use, storage, transport, training, disposal, or HazMat response for these materials.
13. All equipment or supplies brought into the Monument, or structures of any kind built in the Monument by the permittee are the responsibility of the permittee. All materials that are brought to the Monument by the permittee must be removed by the permittee except as otherwise permitted. Any permanent structures, equipment, or supplies that require maintenance, are determined to be unserviceable, or are a safety hazard, must be immediately repaired or removed from the Monument by the permittee. No structures, equipment, or supplies may be left in the Monument following the completion of the project except as listed in the permit.
14. If Monument staff are present at the field site, the permittee must meet with them before beginning permitted activities. Even with a valid permit, authorized Monument staff may prohibit entry into any location(s) within the Monument as they may deem appropriate to conserve or manage resources, particularly in areas where cumulative impacts of permitted activities are concentrated.
15. In order to facilitate monitoring and compliance, any person entering the Monument under the authority of this permit, including assistants and ship's crew shall, upon request by authorized Monument enforcement personnel, promptly: a) allow access to and inspection of any vessel or facility used to carry out permit

activities; b) produce for inspection any sample, record, or document related to permit activities, including data, logs, photos, and other documentation obtained under, or required by, this permit; and c) allow inspection on board the vessel or at the permittee's premises of all organisms, parts of organisms, and other samples collected under this permit.

16. It is prohibited to possess or consume alcohol on any National Wildlife Refuge, other than Midway Atoll in accordance with refuge regulations. Any violations will result in immediate removal of the offender from the Monument at the individual's own cost. Offenders may not be readmitted to the Monument.
17. All persons entering the Monument under the authority of this permit are responsible for the cost of removing themselves from the Monument at the conclusion of the term of the permit or upon revocation or suspension of the permit. All such persons are also responsible for the cost of removing themselves from the Monument in the event of a necessary medical evacuation, emergency evacuation, including weather, or for the cost of any necessary search and rescue operation.
18. Except as expressly required by applicable law, the Co-Trustees are not liable for any damages to equipment or injuries to the permittee and persons entering the Monument under the authority of this permit. The permittee and any person entering the Monument under the authority of this permit shall release, indemnify, and hold harmless the National Oceanic and Atmospheric Administration, the Department of Commerce, the U.S. Fish and Wildlife Service, the Department of the Interior, the United States Government, the State of Hawai'i, and their respective employees and agents acting within the scope of their duties from and against any claims, demands, actions, liens, rights, subrogated or contribution interests, debts, liabilities, judgments, costs, and attorney's fees, arising out of, claimed on account of, or in any manner predicated upon the issuance of this permit or the entry into or habitation upon the Monument or as the result of any action of the permittee or persons participating in the activity authorized by this permit. In the event that a government employee, acting in his official capacity, is the permittee, or is entering the Monument under the authority of this permit, then he shall be subject to all applicable federal and State laws that pertain to claims by or against him predicated upon the issuance of this permit or entry into or habitation upon the Monument.
19. Monument managers or their designees may verbally require the permittee to modify or cease activities not identified in this permit if, in the opinion of the managers or designees, such action is necessary to limit disturbance to or protect Monument resources, to protect government equipment, or to ensure the safety of personnel. After providing such verbal instructions, the managers or designees will provide the permittee with a written modification, suspension or revocation to this permit at the earliest practicable opportunity. The failure to follow verbal instructions or modified permit terms, or to cease activities upon suspension or



revocation of this permit, may constitute a violation of this permit, the Proclamation, the regulations, or other applicable law.

20. Disturbance of any cultural or historic property, including but not limited to Native Hawaiian cultural sites, burials, archaeological deposits, and WWII structures and features, such as stone walls and mounds, stone uprights, bunkers, batteries, camp sites, hospitals, housing areas, and radio towers; or the disturbance or collection of any historic or cultural materials and artifacts, including but not limited to bottles, dishes, cartridges, hospital materials, carvings, human remains, or Native Hawaiian bone or stone implements, found within the Monument, including the sale or trade in such items, is prohibited.
21. All Monument resources within the jurisdiction of the State of Hawai'i are held in trust under the Hawai'i State Constitution, Article XI, Sec. 1. The State of Hawai'i and the Government of the United States reserve ownership or control, as the case may be, of Monument resources, both living and nonliving, that may be taken or derived from those found in the Monument.
22. The permittee must satisfy the following reporting requirements:
  - a. For activities on State lands or within State waters, the permittee must submit a monthly report on the specified form.
  - b. The permittee must maintain a cruise log including, but not limited to: anchoring locations and small boat dive locations. The log must contain a description of cruise activities and the geographic locations of those activities. Within thirty (30) days after the end of the cruise or the expiration date of this permit, the permittee must submit the cruise log and a summary report of activities conducted under this permit. The permittee having authority over the vessel must maintain a daily vessel discharge log, which must be submitted with the cruise log.
  - c. Annual Report. The comprehensive annual report is a summary of all activities undertaken, including but not limited to: dates of all arrivals and departures from islands and atolls within the Monument, names of all persons involved in permitted activities, details of all specimens collected, handled, etc., any other pertinent information, GPS locations of all samples collected, transects, etc., results of work to date, copy of all data collected, and a proposed schedule of publication or production of final work. The report shall include a concise summary or abstract for use in Monument reports. Two hard copies and one electronic copy (Microsoft Word preferred, but not required), must be submitted to the Co-Trustees. The annual report is due by the end of the second week of January of the calendar year that follows the year that the permit was in effect or before a new permit is issued, whichever comes first. Subsequent annual reports are required each year until all data collected under research permits are fully analyzed.

## ATTACHMENT 1

- d. The permittee must debrief the Co-Trustees following the completion of all activities in the Monument covered under this permit. The permittee must schedule the debriefing upon submitting the annual report.
  - e. The permittee must submit two copies of any article, publication, or other product created as a result of the information gained or work completed under this permit, including materials generated at any time in the future following expiration of this permit.
  - f. Any publications and/or reports resulting from activities conducted under the authority of this permit must include the notation that the activity was conducted under permit number PMNM-200x-xxx. This requirement does not apply to publications or reports produced by the news media.
  - g. All required submissions (including plans, logs, reports, and publications) shall be provided to the Monument official at the address indicated in General Condition #1.
23. All data acquired or created in conjunction with this permit will be submitted with the summary report, and annual report. Photographic and video material is considered data. The permittee retains ownership of any data, (including but not limited to any photographic or video material), derivative analyses, or other work product, or other copyrightable works, but the Federal Government and the State of Hawai'i retain a lifetime, non-exclusive, worldwide, royalty-free license to use the same for government purposes, including copying and redissemination, and making derivative works. The permittee will receive acknowledgment as to its ownership of the data in all future use. This requirement does not apply to data acquired or created by the news media.
24. Because photographic or video material that is created for personal use (i.e., not specifically acquired or created in conjunction with this permit) could unintentionally collect data that is also valuable for management purposes, the Co-Trustees reserve the right to request copies of any such material and the permittee agrees to provide a copy of such material within a reasonable time. The Co-Trustees may use such material for management purposes.
25. Any question of interpretation of any term or condition of this permit will be resolved by the Co-Trustees.

**SPECIAL TERMS AND CONDITIONS:**

(see attached list of examples)

Your signature below, as permittee, indicates that you accept and agree to comply with all terms and conditions of this permit. This permit authorizes only those activities listed above. This permit becomes valid on the date when signed by the last Monument Official. Please note that the expiration date on this permit will not be extended by a delay in your signing below.

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PERMITTEE

Date

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Chairperson  
Board of Land and Natural Resources  
Department of Land and Natural Resources

Date

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Barry Stieglitz  
Project Leader  
Hawaiian and Pacific Islands National Wildlife  
Refuges and Papahānaumokuākea Marine National  
Monument

Date

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T. 'Aulani Wilhelm  
Superintendent (NOAA)  
Papahānaumokuākea  
Marine National Monument

Date

## ATTACHMENT 1

### Attachments (3):

1. Proclamation 8031, June 15, 2006
2. 50 CFR Part 404
3. Maps of the Papahānaumokuākea Marine National Monument
4. Chapter 13-60.5 Hawaii Administrative Rules

## Attachment 2

### Legally Vetted Sample Special Terms and Conditions\*:

1. This permit is not to be used for nor does it authorize the sale of collected organisms. Under this permit, the authorized research activity, including work involving a bioassay or bioprospecting, must be for non-commercial purposes, i.e., not involving the use or sale of any organisms, byproducts, or material collected within the Monument for obtaining patents or intellectual property rights for profit.
2. The permittee may not convey, transfer, or distribute, in any fashion (including, but not limited to, selling, trading, giving, or loaning) any coral, live rock, or organism collected under this permit without the express written permission of the Co-Trustees.
3. To prevent introduction of disease or the unintended transport of live organisms, the permittee must comply with the disease and transport protocol attached to this permit.
4. Tender and dive vessels operating within the Monument must \_\_\_\_\_.  
Tenders and small vessels must be equipped with engines that meet EPA emissions requirements.
5. Refueling of tenders and all small vessels must be done in the following location:  
\_\_\_\_\_.
6. No fishing is allowed in State Waters except as authorized under State law for subsistence, traditional and customary practices by Native Hawaiians.

\*Note: These special terms and conditions are based on the general and special conditions previously used by the Board of Land and Natural Resources for activities in the NWHI State Marine Refuge. In all cases, additional special conditions will be added to each permit granted based on the activities being proposed in the application. The suite of special conditions listed above may not be applicable across all permit types and will be used based on the activities proposed in the application. It is also important to understand that under the new joint permit, nothing is authorized as allowed unless it is specified on the permit.

## Legally Vetted Special Terms and Conditions By Permit Type

Joint Special Permit Terms and Conditions	Joint Permit Type				
	Conservation & Management	Research	Education	Special Ocean Use	Native Hawaiian Practices
No fishing is allowed in State Waters except as authorized under State law for subsistence, traditional and customary practices by Native Hawaiians	X	X	X	X	Sustenance fishing allowed if permitted
Tender and dive vessels operating within the Monument must _____ Tenders and small vessels must be equipped with engines that meet EPA emissions requirements.	X	X	X	X	X
Refueling of tenders and all small vessels must be done in the following location(s): _____	X	X	X	X	X
This permit is not to be used for nor does it authorize the sale of collected organisms. Under this permit, the authorized research activity, including work involving a bioassay or bioprospecting, must be for non-commercial purposes, i.e., not involving the use or sale of any organisms, byproducts, or material collected within the Monument for obtaining patents or intellectual property rights for profit		X			
The permittee may not convey, transfer, or distribute, in any fashion (including, but not limited to, selling, trading, giving, or loaning) any coral, live rock, or organism collected under this permit without the express written permission of the Co-Trustees.		X			
To prevent introduction of disease or the unintended transport of live organisms, the permittees must comply with the disease and transport protocol attached to this permit	X	X	X	X	X

Note: Under Presidential Proclamation 8031, all activities are unauthorized except as permitted. In addition to the special conditions listed above all applications are subject to additional special conditions based on the proposed activities.